



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
LIN 99 176 50346

Office: NEBRASKA SERVICE CENTER

Date: JUN 13 2005

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment based immigrant visa. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed that decision on motion. The matter is now before the AAO on a new motion. The motion will be dismissed as untimely.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO has twice affirmed the director's findings.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The AAO's notice, dated September 29, 2003 was mailed to the petitioner at his address of record. On November 3, 2003, the petitioner submitted a letter, without fee, asserting that he did not receive the decision until October 17, 2003 and requesting an additional 30 days in which to file a motion. The director responded on April 10, 2004 that there is no "appeal" from the September 29, 2003 decision. On May 17, 2004, almost eight months after the AAO's decision, the director received the instant motion to reopen. The motion includes a May 7, 2004 job offer accepted by the petitioner on May 10, 2004. The petitioner's motion does not address the AAO's conclusion that the record lacked "evidence of the petitioner's influence in the field, such as letters from independent experts in the field of telecommunications explaining the significance of the petitioner's work in the field or evidence of widely cited articles published in engineering journals."

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

The petitioner's May 2004 job offer does not relate to his eligibility as of the date of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49

(Reg. Comm. 1971).¹ Thus, the petitioner cannot rely on waiting for the job offer as a reason for the delay in filing a timely motion.

As the AAO's decision was sent to the correct address and the May 2004 evidence cannot be considered an excuse for a delay in filing the motion, the petitioner has not demonstrated that the filing of a motion nearly eight months after the AAO's decision was reasonable and beyond his control.

ORDER: The appeal is dismissed.

¹ The petitioner also implies that his employer is seeking a labor certification in his behalf. Any approved labor certification would need to be the basis of a new petition not seeking a waiver of that requirement.